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Supreme Court of the United States.

October Term, 1906.

No. 257.

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JAMES H. McKENNEY,
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HENRY E. FRANKENBERG COMPANY,
Petitioner,

vs.

THE UNITED STATES.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

Brief for the Petitioner.

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Supreme Court of the United States

OCTOBER TERM, 1906.

No. 257.

HENRY E. FRANKENBERG COMPANY,
Petitioner,

vs.

THE UNITED STATES.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit.

BRIEF FOR THE PETITIONER.

Statement of the Case.

The case is before this Court by force of a writ of certiorari issued to the United States Circuit Court of Appeals for the Second Circuit, it being alleged in the petition for the writ that there were conflicting decisions in the Circuit Courts of Appeals for the Second Circuit and for the Seventh

Circuit on the issue herein. The decision in the Second Circuit will be found in the Record, folios 46-47, and that in the Seventh Circuit is reported as United States vs. Buettner, 133 Fed. Rep., 163.

The petitioner imported subsequently to July 24, 1897, certain metal beads on cotton cords, on which the Collector assessed a duty of 45% ad valorem under the provision in Paragraph 193 of the Tariff Act of July 24, 1897 (30 Stat., 151) for

> "Articles or wares not specially provided for "in this Act, composed wholly or in part of "metal, and whether wholly or partly manu- "factured, forty-five per centum ad valorem."

Against this exaction of duty the importer filed protests, claiming that the merchandise is specially provided for in Paragraph 408 of the same Tariff Act, as

> "Beads of all kinds, not threaded or strung, "thirty-five per centum ad valorem."

In due course the protests were transmitted to the Board of General Appraisers, who subsequently rendered a decision thereon, which will be found in the Record, folios 29-35. For reasons which appear in the decision of the Board, the claims in the protests were overruled, and the action of the Collector was affirmed.

The case was brought into the United States Circuit Court for review, and that Court affirmed the decision of the Board (Record, fol. 36).

On appeal, the decision of the Circuit Court was affirmed by the United States Circuit Court of Appeals (Record, fols. 46-47).

Specification of Errors.

The Circuit Court of Appeals erred:

1. In affirming the decision of the United States Circuit Court upon the Steiner case (66 Fed. Rep., 726; affirmed in 79 *id.*, 1003), as decided in the Circuit Court and in the Circuit Court of Appeals.

2. In not reversing the decision of the United States Circuit Court upon the decision of the Circuit Court of Appeals for the Seventh Circuit in the case of United States vs. Buettner, *et al.* (133 Fed. Rep., 163), and in not distinguishing the Buettner case from the Steiner case, in view of the discrepancy between the testimony given in the former and the evidence taken in the latter, as appears from the record in the former and from the Court's decision in the latter.

3. In not holding as a matter of law that the beads in this case were not threaded or strung, within the meaning of the provision for such goods found in Paragraph 408 of the Tariff Act, of July 24, 1897.

4. In not sustaining the claim of the importer as contained in the protests.

POINTS.

I.

The Steiner case as an authority is not entitled to the weight given to it by the United States Circuit Court of Appeals.

It appears from the decision of the Circuit Court

in the Steiner case (66 Fed. Rep., 726), that it was stated by the learned Judge that

> "As I recollect the evidence the only testimony "before the board was to the effect that these "are strung beads; in fact a mere ocular exam- "ination of them demonstrates that they are "strung beads. As there is no evidence to the "contrary the Court would hardly be justified "in overruling the decision of the board."

From this it would appear that there was no evidence in that case that the goods were only temporarily strung, and that they were strung only for purposes of transportation, and that as soon as they were imported they were removed from the strings on which they were brought to this country; nor is there anything to show that they were of that class which are permanently strung and which are used as necklaces.

This decision of the Circuit Court was affirmed by the Circuit Court of Appeals without opinion (79 Fed Rep., 1003).

The Steiner case is a decision which applied to the goods involved in that case, but manifestly is inapplicable here because the facts are different. The testimony in the case at bar shows that the beads were put on the cotton thread for the purpose of holding them, and for the purpose of facilitating transportation (Record, fol. 15); that they are never used as strung beads are used, nor worn on strings about the neck (Record, fol. 16) nor are they ever used as articles of adornment (Record, fol. 20); that they are never used in the condition in which they appear in this case (Record, fol. 16); that they are used for making purses (Record, fols. 17-20), and for various other purposes (Record, fol. 19); that they are not used in

the condition in which they are imported (Record, fol. 19). When used, they are removed from the strings on which they are imported (Record, fol. 19). They are placed on cotton threads and then put up in bunches in order to sell them and to handle them better; if they are not put up in bunches, half of the beads have no holes, and the dealers will not purchase them; beads without holes are comparatively worthless as a rule (Record, fol. 19). Beads have been imported without strings, but they were not merchantable in that condition, and if they are bought without strings, there are many defective ones among them; sometimes as much as 50%, if it is a dishonest man (Record, fols. 20-21); the price is the same whether they are on cords or not (Record, fol. 21). They have always been imported in this condition for possibly fifteen or twenty years (Record, fol. 17).

The testimony cited is sufficient to show that there was much more before the Court in the case at bar than there was in the Steiner case.

There was another bead case which was decided by the United States General Appraisers at the same time that they decided the Steiner case, and their decision in the former was subsequently affirmed by the Circuit Court and by the Circuit Court of Appeals; only memorandum opinions of affirmance seem to have been filed in the Circuit Court and Circuit Court of Appeals, the latter of which is reported as United States vs. Veith (89 Fed. Rep., 1020). In the Veith case, the General Appraisers in their decision, which was printed by the Treasury Department as G. A., 876, and dated September 19, 1891, found that the goods were

> "flat glass beads of various colors and sizes,
> "known commercially as nail-head beads, and

> "that they were fastened upon cards with "threads to protect the edges of the beads from "being broken and chipped in handling and "transportation. * * * Concerning the "nail-head beads fastened upon cards with "threads, in our opinion they are constructively "loose, as the words 'threaded beads' and "'strung beads' are recognized in the trade as "synonymous terms, and the testimony in the "case shows that the beads in question are not "known commercially as strung beads. * * * "The claim of the importer as to the goods "* * * is hereby sustained."

The importers' claims in these two cases of Steiner and Veith were under Paragraph 445 of the Tariff Act of October 1, 1890 (26 Stat., 567, 600), which was in the following language:

> "Glass beads, loose, unthreaded or unstrung, "ten per centum ad valorem."

If the Steiner case is an authority for the proposition that beads on cords are not unstrung within the meaning of Paragraph 445, the Veith case is equally an authority for the proposition that beads threaded on cards are unthreaded within the meaning of Paragraph 445. In the Veith case it was held that the beads were "constructively loose" and it would seem that there was equal authority for holding in the Steiner case that the beads were constructively unstrung.

II.

The decision in the Buettner case supra was a most excellent precedent to be followed in deciding the case at bar, and that case can be readily distinguished from the Steiner case.

The precise question now before this Court was elaborately argued in the Circuit Court and in the Circuit Court of Appeals for the Seventh Circuit as appears from the decision of the latter; the Circuit Court of Appeals holding that metal beads temporarily threaded or strung on cheap, weak cotton threads were not dutiable under the provisions of Paragraph 193 of the Tariff Act, but were dutiable at thirty-five per centum ad valorem under the provisions of Paragraph 408 of the same Act, under which the importer claims in this case.

In Volume 149 of the United States Reports will be found the opinions of this Court in three tariff cases, namely, Cadwalader vs. Wanamaker, page 532; Walker vs. Seeberger, page 541; Hartranft vs. Meyer, page 544. At pages 541 and 544 it is stated that concurring opinions will be found at page 547, in the course of which it is stated that

> "The end of litigation, so much to be desired,
> "is not fully satisfied by the close of the par-
> "ticular law suit, but implies that the question
> "involved therein is settled; so settled, that all
> "parties may adjust their dealings and con-
> "duct accordingly. A change in the personnel
> "of a court should not mean a shift in the law.
> "*Stare decisis* is the rule, and not the excep-
> "tion."

This rule of *stare decisis* is one which has especial merit in the consideration of questions arising under the Revenue Laws, for the reason that a difference of opinion between the Courts of two or more circuits results in great confusion in the administration of the laws. The practical effect of conflicting decisions, such as those in the case at bar, and in the Buettner case, unless one of those decisions should be reviewed by this Court, would be to require an importer who does business within the jurisdiction of the Courts in the Second Circuit to pay a duty of forty-five per centum ad valorem on metal beads as such as those in this case, while the importer who does business within the jurisdiction of the Courts in the Seventh Circuit could bring the very same kind of goods into this country upon the payment of a duty of thirty-five per centum ad valorem; in view of the fact that the Government seems to be unwilling to assess a lower rate of duty than that sustained by the opinion of the Court in the Second Circuit.

In the case of The Madrid (40 Fed. Rep., 678, 679), Mr. Justice LAMAR, in writing the opinion of the Circuit Court, stated that

> "The rule of *stare decisis* means, in general, "that when a point has been once settled by "judicial decision it forms a precedent for the "guidance of courts in similar cases. It ex- "presses 'the principle upon which rests the "authority of judicial decisions as precedents "in subsequent litigations' (Abb. Law Dict., "497; Gee's Adm't vs. Williamson, 27 Amer. "Dec., 631, note). This rule should, in the "main, be strictly adhered to. An adherence "to it is necessary to preserve the certainty, "the stability and the symmetry of our juris- "prudence. Nevertheless, there are occasions "when a departure from it is rendered neces-

> "sary in order to vindicate plain and obvious "principles of law, and to remedy a continued "injustice. These are the two grounds of jus- "tification in departing from a decision which "has become a precedent" (Wells, Res. Adj., Sec. 598).

The Court in the Buettner case seems to have considered that there was an occasion to depart from the rule when they did not feel justified in following the decision in the Steiner case. Referring to the latter, the following appears in the opinion in that case:

> "The Court found, as a fact, that the beads "were threaded upon strings. This was the "whole of the finding. It was not disclosed "whether the threading was for purposes mere- "ly temporary, or was permanent. For all that "appears, the beads in that case may have con- "stituted a completed article of manufacture."

It would therefore seem that the question was much more elaborately presented in the Buettner case than it was in the Steiner case, and for that reason the Judges in the former were justified in not following the ruling in the latter. This will appear more fully from the appendix to this brief, in which will be found a copy of the testimony taken in the Buettner case; and this has been printed from a certified copy of the record in that case, which certified copy has been filed with the Clerk of this Court with the briefs of the petitioner.

This issue was the subject of litigation in the Seventh Circuit on a previous occasion, in which it was held in the Circuit Court that the contention made here by the importers was correct; an appeal from this decision was taken by the United States, but it is understood that this appeal was dismissed in the Circuit Court of Appeals for some

technical reason. The Circuit Court decision in this case has not been reported in the Federal Reporter to my knowledge; but it, together with the notice that the United States had appealed from it, was published by the Treasury Department as Treasury Decision No. 25467 of the series for the year 1904, the case having been decided in the United States Circuit Court for the Northern District of Illinois on the 4th day of January, 1904. Some testimony of Mr. Buettner which was taken in this former case appears in the appendix, to which reference is made, in consequence of a stipulation that it should be admitted in the record of the second Buettner case. There is nothing in the testimony of this witness which differs substantially from his testimony as given in the second case; and there will be no occasion to call the attention of the Court to it; it will thus be seen that this issue has been very thoroughly argued in the Seventh Circuit on two occasions, and the Courts in that Circuit have had presented to them ample grounds for a very thorough consideration of the matter.

It is stated in the opinion of the Circuit Court of Appeals in the case at bar that no new facts and no new arguments are presented which would require a different decision in this cause from that rendered by the Court in the Steiner case. It is respectfully submitted that the evidence taken in this case would seem to show that very many new facts were presented at the time of the argument which would justify a very different decision in the case; and furthermore as the question involved was apparently much more elaborately presented in the Buettner case than it was in the Steiner case, the former should be entitled to more value as a precedent than should be given to the latter.

III.

The beads in this case were not threaded or strung within the meaning of that provision for beads found in Paragraph 408 of the Tariff Act of July 24, 1897.

In cases involving the construction of Tariff laws, it is frequently held that the strict letter of the law should not be followed; among such cases may be mentioned that of Seeberger vs. Schlesinger (142 U. S., 581, 587), where it was held that a provision for

> "Manufactures, articles, or wares not specially provided for in this act, composed wholly or in part of metal"

would not include articles of which an immaterial part was metal, but only in such goods as those where the metal was a necessary and substantial part of the articles should this provision of law determine their classification; and in the case of United States vs. Harden (68 Fed. Rep., 182), it was held by the United States Circuit Court of Appeals for the Second Circuit, that a handkerchief embroidered with only an intial letter was not classified or regarded as embroidered. Petition for writ of certiorari denied (163 U. S., 709).

The same conclusion was reached by the United States Circuit Court of Appeals for the Third Circuit, Mr. Justice SHIRAS sitting as Circuit Justice, in the case of United States vs. Jonas (83 Fed. Rep., 167-168). The same principle of law is very thoroughly reviewed in the case of United States

vs. Kirby, 7 Wallace, 482-486, in which it is stated that

> "All laws should receive a sensible construc-
> "tion. General terms should be so limited in
> "their application as not to lead to injustice,
> "oppression, or an absurd consequence. It will
> "always, therefore, be presumed that the legis-
> "lature intended exceptions to its language,
> "which would avoid results of this character.
> "The reason of the law in such cases should
> "prevail over its letter."

The Court then goes on to give numerous instances where there were exceptions to the literal language of the statute; it is unnecessary to cite them, for they are all cases which are well known to this Court. The same reasoning was employed in the opinion of the Circuit Court of Appeals for the Ninth Circuit, in the case of Tsoi Sim vs. United States (116 Fed. Rep., 920, 926, 927).

If we examine the provision for beads in the Tariff Act relating to this case, we shall find that it differs very much from previous legislation on the subject. By the 24th Paragraph of Section 2 of the Tariff Act of July 24, 1832 (4 Stat., 583, 590), a duty of fifteen per centum ad valorem was provided for

> "Composition, wax or amber beads and all
> "other beads not otherwise enumerated."

By the 12th Paragraph of Section 5 of the Tariff Act of August 30th, 1842 (5 Stat., 548, 556), a duty of twenty-five per centum ad valorem was provided for

> "Wax, amber or composition beads and all
> "other beads not otherwise enumerated."

By Schedule C of Section 11 of the Act of July

30, 1846 (9 Stat., 42, 44), a duty of thirty per centum ad valorem was provided for

> "Beads, of amber, composition, or wax, and all "other beads."

By Schedule N of the Tariff Act of March 3, 1883 (22 Stat., 488, 511), a duty of fifty per centum ad valorem was provided for

> "Beads, and bead ornaments of all kinds, ex- "cept amber."

By Paragraph 445 of the Tariff Act of October 1, 1890 (26 Stat., 567, 600), a duty of ten per centum ad valorem was provided for

> "Glass beads, loose, unthreaded or unstrung."

By Paragraph 99 of the Tariff Act of August 27, 1894 (28 Stat., 508, 514), a duty of ten per centum ad valorem was provided for

> "Glass beads, loose, strung, or carded."

In the Tariff Act of July 24, 1897 (30 Stat., 151), is found in Paragraph 408, the following provisions:

> "Beads of all kinds, not threaded or strung, "thirty-five per centum ad valorem; fabrics, "nets or nettings, laces, embroideries, galloons, "wearing apparel, ornaments, trimmings and "other articles not specially provided for in "this Act, composed wholly or in part of beads "or spangles made of glass or paste, gelatin, "metal, or other material, but not composed in "part of wool, sixty per centum ad valorem."

It will be readily seen that the provision for beads in the Act of 1897 is much more comprehensive than the provisions in previous Tariff Acts which have been quoted. We have in force at the present time a provision for what might be deemed two well-defined classes; namely, those

liable to a duty of thirty-five per centum ad valorem which were evidently intended to be beads in their crude form, and those liable to a duty of sixty per centum ad valorem, which were intended to be manufactured articles composed wholly or in part of those goods which pay thirty-five per centum ad valorem.

In the case of Steinhardt vs. United States (113 Fed. Rep., 996), metal beads such as those in the case at bar had been assessed with duty by the Collector under the provision in Paragraph 408 of the Tariff Act of 1897 for articles composed wholly or in part of beads, and in that case the importer claimed that they should have been assessed as articles composed wholly or in part of iron, steel or other metal under Paragraph 193 of the same Tariff Act. The Circuit Court sustained the contention of the importer, and held that beads were not articles composed wholly or in part of beads because they had been strung upon a cotton thread; no claim was made in that case, however, that the goods were subject to duty at the rate of thirty-five per centum ad valorem under the first clause of Paragraph 408, as is claimed here. As evidence that beads such as those in this case are in their crude form, attention is called to the testimony in the case, from which it appears that the beads were put on the cotton thread for the purpose of holding them and for facilitating transportation (Record, fol. 15); that they are never used in the condition in which they appear (Record, fols. 16 and 19); that they are placed on cotton threads and then put up in bunches in order to sell and handle them better, for if they are not put up in this manner, half the beads have no holes, and the dealers will not purchase them (Record, fol. 19). Beads have

been imported without strings, but they were not merchantable in that condition, and if they are bought without strings there are many defective ones among them, sometimes as much as fifty per cent. if the manufacturer is a dishonest man (Record, fols. 20, 21). They have always been imported in this condition for possibly fifteen or twenty years (Record, fol. 17).

The words "unthreaded or unstrung," in Paragraph 408 of the Tariff Act, evidently mean not permanently threaded or strung, because one of the witnesses was asked if these beads are ever used as strung beads are used and worn about the neck, and his answer was that they were never so used (Record, fol. 16).

There have been many decisions relative to beads permanently strung, which are published by the Treasury Department as decisions of the Board of General Appraisers, such as General Appraisers' Decision No. 4189, dated June 14, 1898, referring to beads forming parts of beaded curtains, and to beads forming rosaries and described in General Appraisers' Decision No. 4084, dated February 25, 1898, or to necklaces composed chiefly of glass beads and described in General Appraisers' Decision of Nov. 14, 1905, Abstract 8978, or to the bead bracelets mentioned in General Appraisers' Decision of May 25, 1905, Abstract No. 6776, or to the same goods described in General Appraisers' Decision dated March 8, 1905, Abstract 5211, or to the bead necklaces described in General Appraisers' Decision No. 4458, dated June 15, 1899, or to the bead necklaces mentioned in General Appraisers' Decision of January 29, 1906, Abstract 9890, or to the beaded curtains described in General Appraisers' Decision of January 29, 1906, Abstract

9889, or to the bead necklaces described in General Appraisers' Decision No. 4418, dated April 20, 1899.

The evidence further shows that beads were always imported on strings when in their crudest form, except for the time when there were no hands to string them, and the importer had to take them without strings, but even then he could not sell them in that condition (Record, fol. 20).

In a recent decision by the Circuit Court of Appeals for the Second Circuit, entitled Tiffany vs. United States (112 Fed Rep., 672, 674), it was held that a string of pearls was worth more than the aggregate value of the individual pearls composing it. Applying that rule to this case, we would find that if the beads had been permanently strung they would undoubtedly be worth more, and would then be dutiable at sixty per centum ad valorem under the later provisions in Paragraph 408. We should then have beads imported as these were, dutiable at thirty-five per centum ad valorem under the first clause of Paragraph 408, as a mere collection of individual beads whose value had not been increased by their collocation.

In the very recent case of Neresheimer vs. United States (136 Fed. Rep., 86, 88), the Circuit Court of Appeals for the Second Circuit quoted with approval from their decision in the Tiffany case, *supra*, and held that certain pearls which had been drilled, had not been advanced to a special value beyond the aggregate amount of their individual values by an assortment and selection that fitted them for use as a necklace or string of pearls. The Attorney-General directed that no appeal should be taken from this case (T. D., 25876).

In General Appraisers' Decision No. 5892, and

dated January 12, 1905, they had before them certain pearls pierced and strung on cotton cords, on which duty had been assessed by the Collector of Customs under the provisions found in Paragraph 434 of the Tariff Act of 1897, which is as follows:

> "434. Articles commonly known as jewelry, "and parts thereof, finished or unfinished, not "specially provided for in this Act, including "precious stones set, pearls set or strung, and "cameos in frames, sixty per centum ad va- "lorem."

It was claimed by the importer that the goods in question were dutiable under the provisions of Paragraph 436 of the same Tariff Act, which is in the following language:

> "Pearls in their natural state, not strung or "set, ten per centum ad valorem."

The Board of General Appraisers held, on the authority of the decision in the Tiffany case, *supra,* that the merchandise was dutiable by similitude at the same rate as pearls in their natural state, as claimed by the importer. Here was a case where pearls, which were in fact strung, were held to be dutiable under a provision in the Tariff Act for pearls not strung, under the principle laid down in the Tiffany case, *supra,* that pearls to be subject to duty under the provision for strung pearls should be of greater value when strung than the aggregate values of the individual pearls composing the whole string. I have no record of any appeal having been taken from this decision.

The evidence in this case shows that the beads require both time and labor, as in the pearl case, to be applied to them before they serve any useful purpose, and whether they are used for making

purses (Record, fols. 17, 20), or for embroidering (Record, fols. 17, 19), or for many other purposes (Record, fols. 19, 20), they are practically worthless except as crude materials for manufacturing purposes in the condition in which they are imported and in which they are presented here.

The evidence also shows that the goods have been imported in their crudest form on strings as one witness said for possibly fifteen or twenty years (Record, fol. 17) and another witness mentioned, without specifying the time, that they were imported otherwise than on strings when they could not get them on the strings (Record, fol. 20); and it would seem that this manner of importing beads must have been within the knowledge of Congress when the present Tariff Act was passed.

It is true that in their decision of the case at bar the General Apraisers state that the testimony of large importers of beads was to the effect that beads strung on cotton cords for temporary purposes were known and had been known in trade for a period of thirty years as strung beads (Record, fols. 31, 32); *but there is no evidence of that kind which was taken in this case.* The General Appraisers incorporated in their return to the United States Circuit Court some evidence taken by them in some other case in which one of the witnesses stated that the terms threaded and strung beads were familiar ones in his trade, and that the term applied to beads threaded or strung in bunches (Record, fol. 24). The other witness testified to the same effect (Record, fol. 26); but this Court is asked to disregard this testimony for the reason that it appears to have been taken before the General Appraisers by the counsel for the Government and that there was no cross-examination (Record,

fols. 22 to 26). Moreover, it does not appear from the record that the importer himself was present when his case was heard, *nor was he represented by counsel or by any person whatever.* Furthermore, the questions addressed to these two gentlemen were leading, and if it was attempted to show that the terms threaded and strung beads were ones of commercial designation, there was not sufficient evidence to bring the case within the definition of this Court to the effect that

> "Necessarily the commercial designation is the "result of established usage in commerce and "trade, and such usage, to affect a general en- "actment, must be definite, uniform and gen- "eral, and not partial, local, or personal."

Maddock vs. Magone, 152 U. S., 368-371; followed also in Berbecker vs. Robertson, 152 U. S., 373, 376.

Such testimony should not be allowed to overthrow that taken in this case *where the witnesses were examined by the counsel for the importers, by the counsel for the Treasury Department and by each one of the three General Appraisers in turn who heard the case* (Record, fols. 14-21). The General Appraisers have also incorporated in their return, the testimony taken in another case where the witness was examined by the counsel for the importer and cross-examined by the counsel for the Government; but there is nothing in that testimony which impairs the value of that taken in the case at bar (Record, fols. 27-29).

The General Appraisers also refer in their decision to the language relating to beads in the Tariff Acts of 1890, 1894 and 1897, and to some decisions made on questions arising under those Tariff Acts (Record, fols. 32-34). It will be noted

that the provision for beads in Paragraph 445 of the Tariff Act of 1890 relates only to glass beads, and an importation of metal beads must necessarily have come within the provision for manufactures of metal, that being the only paragraph in the Tariff Act which would cover them. The reference to the Steiner case, G. A. 876, *et seq.* (Record, fol. 33) has no particular application to an importation of metal beads, but refers only to glass beads, which were the goods before the Courts in that case. The change in the phraseology from the bead paragraph of the Tariff Act of 1890 to the paragraph in the Tariff Act of 1894 consisted in omitting the words, "unthreaded or unstrung" and inserting in their place the words, "strung or carded"; so that the provision in the Tariff Act of 1894 was

"Glass beads, loose, strung or carded."

As bearing on this change in the phraseology, it may be stated that the General Appraisers in the Veith case, decided by them September 19, 1891, held that certain flat glass beads fastened upon cards with threads to protect the edges of the beads from being broken in handling and transportation were constructively loose; and this decision was affirmed by the United States Circuit Court February 25, 1892 (not reported), and the latter was affirmed by the United States Circuit Court of Appeals for the Second Circuit April 28, 1893 (89 Fed. Rep., 1020). When the Tariff Act of 1894 was in preparation, the latest decision of the United States Circuit Court of Appeals on the bead question had held that beads threaded were constructively loose; and as the General Appraisers had already held in the Veith case that threaded or strung beads were recognized in the trade as synonymous terms, there

would seem to have been no reason for repeating the words unthreaded or unstrung in the Act of 1894.

The provision for beads in the Tariff Act of 1894 does not seem to have been the subject of any decision in the Federal Courts, but the Steiner case *supra*, which arose under the Tariff Act of 1890 was decided in the United States Circuit Court April 25, 1894, and that decision was affirmed in the United States Circuit Court of Appeals January 23, 1895. The provision for beads in the Tariff Act of 1897 was then enacted, which, as before stated, provided for beads of all kinds without regard to material, and metal beads are therefore within it as well as glass beads; and the only other provisions in that act relatng to beads are the one for manufactures containing beads and made in part of wool, whch are expressly exempted from classification under Paragraph 408, and a provision in Paragraph 390 for silk goods ornamented with beads, the rate of duty, sixty per centum ad valorem, being the same as the provision for other manufactured articles composed in part of beads in Paragraph 408.

There does not seem to be anything else in the decision of the General Appraisers which requires any attention on the part of the petitioner, except the fact that they declined to follow the decision of the United States Circuit Court of Appeals for the Seventh Circuit in the Buettner case in preference to that of the same Court for the Second Circuit in the Steiner case.

In the case of Conqueror, 166 U. S., 110, 115, it was stated that (evidently referring to tariff cases):

> "In all this class of cases, the meaning of "the words, as used in the particular statute,

"must be gathered from the context and from "the evident purpose of the act."

Applying this principle to the question at issue here, we find that in Paragraph 445 of the Tariff Act of 1890, loose beads were differentiated from beads unthreaded or unstrung in the provision for

"Glass beads, loose, unthreaded or unstrung."

The provision for beads in the Tariff Act of 1894, was contained in Paragraph 99 and was in the following language:

"Glass beads, loose, strung, or carded."

Loose beads were there charged with the same rate of duty as strung or carded ones, it having been held in the Veith case, *supra*, and shortly before the enactment of the Tariff Act, that carded beads were constructively loose, and that strung beads and threaded beads, that is, beads threaded on cards, were syonomous terms.

In the Tariff Act of 1897, there is no provision for loose beads, and as the testimony in the case at bar shows that the only manner in which beads have been imported for many years is on strings, it is a reasonable assumption that Congress must have taken notice of the fact that beads were no longer imported loose, and, therefore, were only imported on strings, and in order to find goods to come within the provision under which the petitioner claims in this case, so that all parts of the Act may become effective, it is necessary to hold that beads on strings, being temporarily strung, were those subject to the duty of thirty-five per centum for

"Beads of all kinds, not threaded or strung,"

as found in Paragraph 408 of the present Tariff Act.

Some reference may be made in the argument of the case at bar to Morrison vs. United States, 179 U. S., 456, in which the beads were strung and were made to imitate cat eyes, tiger eyes, garnets, acquamarines, moonstones, topaz and pearls, all of which were assessed with a duty of 60% under a provision in Paragraph 108 of the Tariff Act of 1890 for "manufactures of glass, or of which glass shall be the component material of chief value, not specially provided for in this Act." The importers claimed that the goods in question were dutiable under a provision in Paragraph 454 of the same Tariff Act for "imitations of precious stones composed of paste or glass not exceeding one inch in dimensions, not set, ten per centum ad valorem."

The U. S. Circuit Court of Appeals, for the Second Circuit sustained the claim of the importers (84 Fed. Rep., 444), and the matter was brought into this Court by a writ of certiorari. In the Court below it was conceded that the merchandise was excluded from classification under Paragraph 445, and that unless it was dutiable under Paragraph 454, it was properly classified by the Collector under Paragraph 108.

It can thus be seen as appears from the opinion of this Court at page 458, that the only issue in the case was, are or are not the goods imitations of precious stones, and are they or are they not dutiable under the provisions of Paragraph 454.

It is respectfully submitted that the decision in the Morrison case has no bearing on the case at bar because the only claim in the latter is whether or not the goods are dutiable under the provisions of Paragraph 408 of the present Tariff Act, which is somewhat like Paragraph 445 of the Tariff Act

of 1890, and as in Morrison case, such a claim was expressly excluded from the case by stipulation, it clearly was not the subject of decision in that case.

It is stated in the opinion of the Court below that the beads in this case as well as those in the Steiner case, *supra,* were strung on thin, cheap cotton thread, and that such stringing was temporary only for transportation and for convenience in selling, and that they were unstrung before they were used (Record, fol. 46). Many instances can be given where it has been held that devices for the transportation of merchandise were not sufficient to change their condition for the purpose of classification under the Customs Revenue Laws. In the case of Fleet vs. United States (148 Fed. Rep., 335), it was held in the United States Circuit Court that certain pieces of lambskin, sewed together continuously, not only for safety in transportation, but also for the purpose of presenting a more inviting appearance to purchasers, were not thereby taken out of the provision for dressed furs on the skin in the Tariff Act of 1883, and made liable to duty under the provision for articles made of fur in the same Tariff Act.

In General Appraisers' Decision No. 5457, dated October 23, 1903, it was held that certain squirrel skins, sewed together and made into parts of linings with a muslin lining basted on them, which was not a permanent lining, but intended merely for holding the skins and which was removed before they are finally cut to pattern to be used in making or lining garments, were dutiable as furs dressed on the skin but not made up into articles under the Tariff Act of 1897, and were not dutiable under a provision for manufactures of fur in the same Act.

In the case of Brauss & Co. vs. United States (120 Fed. Rep., 1017), it was held that certain split bamboo cut into lengths of twelve inches and tied in bundles were not manufactured articles, but should be classified under a provision for bamboo unmanufactured in Paragraph 700 of the Tariff Act of 1897.

In the General Appraisers' Decision No. 5315, dated April 2, 1903, the Brauss case, *supra,* was followed, and it was stated that the Treasury Department had acquiesced in the decision in that case. The goods were bamboo splits cut into lengths of twelve inches which were held to come within a provision for bamboo unmanufactured.

In General Appraisers' Decision No. 5626, dated March 30, 1904, it was held that certain small slivers of whalebone tied with a twine into bales or bundles of various sizes for convenient shipment were not manufactures of whalebone under the provision in the Tariff Act of 1897, but should be classified as whalebone unmaufactured under a provision in the same Act. In this case the Board quoted from the well known case of Hartranft vs. Wiegmann (121 U. S., 609, 615), a principle frequently invoked in the consideration of Tariff laws, where it was said that

> "The application of labor to an article, either "by hand or by mechanism, does not make the "article necessarily a manufactured article "within the meaning of that term as used in "the tariff laws."

Among other cases taken from the Hartranft case, *supra,* was that of United States vs. Wilson (foot of p. 615), where it was held that marble which had been cut into blocks for convenience of trans-

portation was not manufactured marble but was free from duty as being unmanufactured.

In the case of Boak vs. United States (125 Fed. Rep., 599, 600), it was held by the Circuit Court of Appeals for the Seventh Circuit regarding certain fox berries which had been imported in casks filled with water, that the use of water was a mechanical medium only to secure the berries against crushing in transportation, and that as imported they were in their natural condition.

In the case of Gudewill & Bucknall vs. United States (142 Fed. Rep., 214), the Court had before it an importation of small pieces of cork averaging a little larger in size than an ordinary grain of corn, and produced by grinding the refuse obtained in trimming cork bark in the process of fitting it for baling. It appeared that the principal object of the grinding was that the merchandise might be more conveniently shipped, and that it is used in the manufacture of linoleum and for other purposes, and for the former needs to undergo much further preparation. It was held that the process of grinding it did not make it a manufacture of cork within the provision for such goods in Paragraph 448 of the Tariff Act of 1897, and that it should have been classified as waste under Paragraph 463 of the same Act.

In the case of Hartranft vs. Wiegmann, *supra*, and cases cited therein, it was held that if the question were one of doubt, the doubt would be resolved in favor of the importer, as duties are never imposed on the citizen upon vague or doubtful interpretation.

IV.

The decision of the United States Circuit Court of Appeals should be reversed and the case remanded to the United States Circuit Court with directions to enter a decree reversing the decision of the Board of United States General Appraisers and holding the beads in controversy to be dutiable at thirty-five per centum ad valorem under the provision in Paragraph 408 of the Tariff Act of July 24, 1897, for beads of all kinds not threaded or strung.

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